

JOINT PARTICIPATION AGREEMENT
BETWEEN MIAMI-DADE COUNTY AND THE CITY OF MIAMI BEACH
DADE BOULEVARD IMPROVEMENT

This JOINT PARTICIPATION AGREEMENT ("Agreement"), made and entered into this _____ day of _____, 2024, by and between the CITY OF MIAMI BEACH, FLORIDA, a municipal corporation of the STATE OF FLORIDA, hereinafter referred to as the "City", and MIAMI-DADE COUNTY, a political subdivision of the STATE OF FLORIDA, hereinafter referred to as the "County".

WITNESSETH

WHEREAS, both parties herein wish to facilitate the construction of a road improvement project in MIAMI-DADE COUNTY, hereinafter referred to as the "Project" described as follows:

Milling and Resurfacing of Dade Boulevard between the 17 Street Bridge approach and 23rd Street; and

WHEREAS, the County wishes to utilize the resources of the City to contract and construct the Project, subject to the terms and conditions of this Agreement; and

WHEREAS, the City wishes to collaborated with the County to perform the milling and resurfacing project as part of a City's water transmission line project along Dade Boulevard;

NOW, THEREFORE, in consideration of the promises and covenants contained herein, the parties agree:

1. **AGREEMENTS:**

- 1.1 **Recitals:** The recitals are true and correct and are incorporated herein by this reference to form a part of this Agreement.
- 1.2. **Effective Date:** This Agreement shall become effective on the date upon which the resolution adopted by the Board of County Commissioners approving this Agreement becomes effective.

2. **RESPONSIBILITIES OF THE CITY:**

- 2.1. **Design:** The City shall complete at its sole expense, the construction plans, technical specifications, special provisions, pay items and cost estimates for the Project in accordance with standard FDOT, County, and/or City, as applicable, design criteria, to the satisfaction of the County Department of Transportation and Public Works (DTPW) Director. The City consultants shall be made available to the County at the City's sole expense to review shop drawings and perform required post-design services, limited to Project design.
- 2.2. **Permits and Approvals:** The City shall obtain all necessary permits, including any permits required by the County, and utility adjustments; and coordinate the review of construction documents by utilities and permitting agencies. The City shall make all necessary adjustments as required for approval and/or permitting by those agencies. The City shall obtain all necessary permits, and utility adjustments for the Project in accordance with applicable state, federal and local laws and ordinances. The City shall not pay for any permits required by the County DTPW.

2.3. Right-of-Way: The City shall acquire at its sole expense, any right-of-way that is required to complete the construction of the Project.

2.4. Public Information and Involvement: At its sole cost and expense, the City will implement a Public Involvement Plan (PIP) during the design and construction of the Project to provide information to property owners, tenants, and area residents, including but not limited to: public meetings, Project documentation and flyers, business signs, directional parking signs, and schedules for major work to be performed in the area. Appropriate investigation of the Project stakeholders shall be used to develop the goals and objectives to implement the PIP. The City shall submit a copy of the PIP to the County DTPW Director for review and concurrence prior to its implementation.

Projects that exceed \$1,000,000.00 in construction costs shall comply with the process and guidelines for the preparation and implementation of PIPs as established by Miami-Dade County Implementing Order 10-13.

2.5. Publicity: By the acceptance of the funds from the County as provided for in Section 3, the City agrees that the Project elements funded by this Agreement shall recognize and adequately reference the County as a funding source. The City shall ensure that all publicity, public relations, advertisements and signs recognizes and references the County for the support of all contracted activities. This is to include, but is not limited to, all posted signs, pamphlets, wall plaques, cornerstones, dedications, notices, flyers, brochures, news releases, media packages, promotions, and stationery. The use of the official County logo is permissible for the publicity purposes stated herein. The City shall submit sample

or mock-up of such publicity or materials to the County for review and approval. The City shall ensure that all media representatives, when inquiring about the activities funded by this Agreement, are informed that the County is its funding source.

2.6. Accounting: The City shall at all times maintain separate accounting for the costs of the Project so those costs may be independently verified and audited by the County, at the request and cost of the County. The City agrees to permit the County auditors to inspect the books, records and accounts of the Project for five (5) years after completion of the Project. These records shall be made available to the County for inspection within ten (10) business days upon written receipt of a written request from the County.

2.7. Construction: The City shall procure the services of a licensed contractor holding an engineering contractor's license to construct the Project. The City may award the contract through any available lawful means, in accordance with Section 255.20, Florida Statutes, which in the City discretion, affords the most competitive price for construction of the Project and which may include, but is not limited to, bid solicitation, request for proposals, the award of a change order on existing City contract(s), or the extension of unit-prices provided in connection with prior competitive bid awards. Notwithstanding any provision to the contrary, the City shall comply with all applicable County contract compliance and oversight measures relating to the expenditure of County funds, in accordance with Section 7 of this Agreement, and include such requirements in all solicitations. Prior to the advertisement to solicit a licensed contractor to

construct the Project, the City shall forward to the County DTPW Capital Division all necessary documentation to review for the application of Small Business Enterprises (SBE) measures, Wage and Workforce requirements, and request concurrence to advertise. In turn, DTPW, will secure concurrence from Small Business Development (SBD).

The construction contract shall also contain a requirement that the contractor(s) provide a payment and performance bond at least in the amount and form required by state law naming the County and City as joint obligees or joint contracting public entities. The construction contract shall contain a contingency amount to address unforeseen conditions and owner required changes which shall not exceed ten percent (10%) of the base amount of the contract, unless otherwise approved in writing by designated representatives of the County and City. The commitment for the expenditures of any contingency funds shall not be made by the City without the prior written approval of the County DTPW Director. The County shall respond, in writing, within thirty (30) business days of receiving written requests from the City to approve the commitment of contingency funds.

Subsequent to the evaluation of bids or proposals by the City and the City determination of the advantageous bid or proposal, the City shall provide said evaluation to the County DTPW Director for review and approval. SBD shall also be required to conduct a Pre-award Compliance review to determine the bidders' compliance with the SBE measures prior to the City awarding the contract. Final commitment of County funds for the Project shall occur upon approval of the

contract award recommendation by the County DTPW Director. The County agrees that the selection, retention and discharge of such contractor shall be the responsibility of the City.

2.8. Claims and Change Orders: The City shall notify the County DTPW Director in writing when claims or change orders arise. The City shall also invite the County to participate in negotiations of these claims and change orders. The County shall review and make a determination or approval of all change orders or supplemental agreements, permits, modifications of plans, or other requests for approvals submitted by the City. SBD shall also be notified of any change orders to evaluate the applicability of SBE measures.

2.9. Construction Administration and Inspection: The City shall exercise all responsibilities of the owner under the construction contract, including construction administration and inspections. The City may delegate this function to an authorized agent or Construction Engineering Inspection consultant. The County's inspector shall have an oversight role in the routine daily inspections. In the case of a disagreement over the interpretation of the plans, the County DTPW Director shall have final authority subsequent to an independent final inspection by the County. The City representative and the County's designated representative shall jointly perform the inspection of the project which immediately precedes substantial completion. The City shall certify upon completion that the project has been constructed pursuant to the design plans, specifications and approved change orders. Final payment to the City and obligations of maintenance responsibilities to the parties shall be subject to the

final acceptance of the project by the County DTPW Director. For the avoidance of doubt, the County is not waiving any of its sovereign rights over the jurisdiction of its County owned public right-of-way.

2.10. Coordination with Miami-Dade County Public Schools: Due to potential safety, operational and bus transportation impacts, the City shall coordinate with Miami-Dade County Public Schools staff to implement maintenance of traffic measures.

2.11. Nondiscrimination: During the performance of this Agreement, the City agrees to not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, sex, pregnancy, age, disability, marital status, familial status, sexual orientation, gender identity or gender expression, status as victim of domestic violence, dating violence or stalking, or veteran status, and on housing related contracts the source of income, and will take affirmative action to ensure that employees and applicants are afforded equal employment opportunities without discrimination. Such action shall be taken with reference to, but not limited to: recruitment, employment, termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on the job training.

By entering into this Agreement, the City attests that it is not in violation of the Americans with Disabilities Act of 1990 (and related Acts) or Miami- Dade County Resolution No. R-385-95. If the City or any owner, subsidiary or other firm affiliated with or related to the City is found by the responsible enforcement agency or the County to be in violation of the Act or the Resolution, such violation

shall render this Agreement void. This Agreement shall be void if the City submits a false affidavit pursuant to this Resolution or the City violates the Act or the Resolution during the term of this agreement, even if the City was not in violation at the time it submitted its affidavit. The provisions of Section 2.13 shall be included in any agreement between the City and any consultant and/or contractor performing work on this Project.

3. RESPONSIBILITIES OF COUNTY:

3.1 Funding Amount, Reimbursement of Project Costs: The construction cost estimate for the Project is \$1,205,000.00 (this amount includes ten percent (10%) contingency). Subject to and contingent upon the Board of County Commissioners' and the Transportation Planning Organization's review and approval process pursuant to Chapter 33E of the Code of Miami-Dade County, Florida, the County agrees to provide funds up to \$1,205,000.00 for eligible costs, as defined herein, incurred by the City for the construction of the Project. The County shall disburse to the City funds for the Project in the manner set forth in Section 4. The County shall incur no liability for any costs in excess of said funding amount unless there has been a duly authorized increase approved by Miami-Dade Board of County Commissioners.

3.2 County Payments of Project Costs: The County funds provided for eligible costs as defined herein, incurred for the construction of the Project are specified below:

<u>Funding Amount</u>	<u>Funding Source</u>	<u>County Fiscal Year of Commitment</u>
\$1,205,000.00	Road Impact Fee District 8	2024-2025

3.3 Project Cost Adjustments: The amount contributed by the County is based on the current estimated costs of the Project. The parties recognize that adjustments to the above-referenced cost may be required in the future, and that at the option of the parties, amendments may be entered into to revise the funds available for the Project. Provided that there is no increase in the amount of County funds required as stated in Section 3.1, amendments may be executed by the City Manager or County Mayor's designee without the need for approval by the City Council and County Commission. Otherwise, further funding commitments shall **be subject to the approval of the parties' respective governing boards.**

4. **ELIGIBLE COSTS:** The parties agree that only the below identified costs that **may** be incurred by the City and that are directly related to the Project are eligible for reimbursement, provided adequate documentation accompanies the reimbursement request in the form of approved invoices, verified payment requests, documented journal entries, and/or check vouchers. For purposes of this Agreement, eligible costs are further defined as those pertaining to the construction of Project elements that are the standard items normally provided for by the County in County road improvement projects, and not the enhancement of standard items, or the incorporation of items which are in addition to those standard items. The County shall not be assumed to be liable to provide reimbursement for the design, construction or maintenance of such items that do not conform to this section of the Agreement. If enhancements to standard items are constructed in this Project, the City may request County reimbursement only to a maximum amount corresponding to that which

would be expended in providing the normal standard version of that item for a project of the same scope. The parties further agree that eligible costs will not include fees for construction management, construction inspections, and project management.

4. **SCHEDULE AND MANNER OF REIMBURSEMENTS:** Upon execution of the Agreement, the City shall furnish the County with a copy of the estimated budget for the Project, and will similarly furnish the County with any and all revisions thereto. At the time of contract award for this Project, the City shall submit the Estimated Quarterly Construction Payout Schedule for the Project to the County DTPW Director. Quarterly disbursement of County funds to the City shall be based upon City invoices with certified copies of paid contractor invoices attached and shall not include any other charges. The City acknowledges that a delay in the County's processing of invoices may occur if subcontractor reporting required by County Code is not current, as reflected in the County's Business Management Workforce System (see Section 6 of this Agreement). Final invoice shall be submitted within 120 working days after contractor receives final acceptance from the City. The County may elect to terminate this Agreement due to the City's failure to invoice the County within 120 working days after the contractor receives final acceptance of the Project from the City. Thereafter, any funds left from the County's funding commitment pursuant to Section 3.1 will become available to be redirected for any expenditure that the County shall determine.
5. **COMPLIANCE WITH LAWS:** The parties shall comply with applicable federal, state and local laws, codes, ordinances, rules and regulations in performing their respective duties, responsibilities, and obligations pursuant to this Agreement and with all

applicable laws relating to the Project. The parties shall not unlawfully discriminate in the performance of their respective duties under this Agreement.

6. **SMALL BUSINESS, WAGES, AND WORKFORCE PROGRAMS COMPLIANCE**

AND OVERSIGHT: Whenever federal or state funds are used, the City agrees to comply with applicable County's regulations, including but not limited to, the Small Business Enterprise (SBE) Goods Program, the SBE Services Programs, the SBE Architecture and Engineering Program, the SBE Construction Service Program, the Community Workforce Program (CWP), the Resident First Training and Employment Program (RFTE), and the Responsible Wages and Benefits Ordinance, Section 2-11.16 of the County Code. The program provisions are available <https://www.miamidade.gov/global/business/smallbusiness/business-development-legislation.asp>. Specifically, the City agrees to abide by the applicable contract measures recommendation(s) established by the County's SBD Division Project Worksheet for the participation of specified business entities and/or trades for Wage and Workforce requirements, as administered by SBD. The County's web-based Business Management Workforce System (BMWS) shall be utilized to comply with SBE, wage, and workforce program and Subcontractor reporting requirements (<https://mdcsbd.gob2g.com>). SBD shall have the right to oversee and perform compliance monitoring, including but not limited to, the right to audit and to require reports and documentation related to the Miami-Dade County Code and Implementing Orders. Failure to comply with the requirements of the executed Agreement by the City, the County will withhold payment in the amount equivalent to the fines which will be assessed against a private contractor.

7. **INDEMNIFICATION**: To the extent authorized by Florida law, the City hereby agrees to indemnify, defend, save and hold harmless the County to the extent of all the limitations included in Section 768.28, Florida Statutes, from all claims, demands, liabilities and suits of any nature whatsoever arising out of, because of or due to the breach of this Agreement by the City, its agents or employees. It is specifically understood and agreed that this indemnification clause does not cover or indemnify the County for its sole negligence or breach of contract.

To the extent authorized by Florida law and subject to the express limitations and amounts set forth in Section 768.28, Florida Statutes, the County hereby agrees to indemnify, defend, save and hold harmless the City from all claims, demands, liabilities and suits of any nature whatsoever arising out of, because of or due to the breach of this Agreement by the County, its agents or employees. It is specifically understood and agreed that this indemnification clause does not cover or indemnify the City for its sole negligence or breach of contract.

In the event of breach or non-performance by the persons selected by the City to perform the work, the City shall, upon written request by the County, assign to the County any and all of its rights under the affected contract for purposes of the County's prosecution of claims, actions or causes of action resulting from such breach of non-performance unless the City, at its option, pursues such claims, actions or cause of action through arbitration, administrative proceeding or lawsuit. The City agrees to cooperate fully with the County in the prosecution of any such claim or action. Any damages recovered by the County, minus attorney's fees and

costs, which is attributable to an expenditure by the City shall be returned to the City by the County, within sixty (60) business days of receipt.

8. **DISPUTE RESOLUTION, APPLICABLE LAW**: The parties shall resolve any disputes, controversies or claims between them arising out of this Agreement in accordance with the “Florida Governmental Conflict Resolution Act”, Chapter 164, Florida Statutes, as amended. This agreement shall be governed by the laws of the State of Florida. Venue in any proceedings shall be in Miami-Dade, Florida. Each party will bear its own attorney’s fees.
11. **TERMINATION AND DEFAULT**: If the City fails to issue a Notice to Proceed (NTP) for the construction of the Project by **Month X, 202X** (NTP Deadline), the County shall have the option of (a) immediately terminating the Agreement, or (b) notifying the City in writing of a requirement that an NTP for the construction of the Project be issued by a new date to be set by the County. The City acknowledges that it has no legal right to any funds provided for in Section 3.1 if the County elects to terminate the Agreement due to the City’s failure to issue an NTP by the NTP Deadline. If The County terminates this Agreement pursuant to this section, the County has the right to utilize the funds identified in Section 3.1 at its sole discretion.
12. **JOINT PREPARATION**: The parties acknowledge that they have sought and received whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties from other.

13. **SEVERANCE**: In the event a portion of this Agreement is found to be invalid by a court of competent jurisdiction, the remaining provisions shall continue to be effective unless the City or County elects to terminate this Agreement. An election to terminate this Agreement based upon this provision shall be made within seven (7) business days after the finding by the court becomes final.
14. **NOTICES**: Any and all notices required to be given under this Agreement shall be sent by first class mail, addressed as follows:

To the County:

Attention: Director, Department of Transportation and Public Works
Miami-Dade County
701 NW 1 Court, Suite 1700
Miami, Florida 33136
(786) 469-5406

To the City:

Attention: City Manager

City of Miami Beach
1700 Convention Center Drive
Miami Beach, FL 33139

15. **ENTIRE AGREEMENT, AMENDMENTS**: This document incorporates and includes all prior negotiations, correspondence, conversations, agreements and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that no modification, amendment or alteration in the terms contained herein shall be effective unless set forth in writing in accordance with this section. No modification,

amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the parties.

IN WITNESS WHEREOF, the parties hereto set their hands and official seals the day and year first above written,

ATTEST:

JUAN FERNANDEZ-BARQUIN
CLERK OF THE COURT, AND
COMPTROLLER

MIAMI-DADE COUNTY, FLORIDA,
BY ITS BOARD OF
COUNTY COMMISSIONERS

BY: _____
Deputy Clerk

BY: _____
County Mayor of County Mayor's Designee

Approved by County Attorney
as to form and legal sufficiency

Assistant County Attorney

ATTEST:

CITY OF MIAMI BEACH, a municipal
corporation of the State of Florida

BY: _____
City Clerk City Mayor

BY: _____

(Affix City Seal)

Approved by City Attorney
as to form and legal sufficiency _____
CITY ATTORNEY

DRAFT